

OCT 04 2006

REMARKS

The Office Action mailed August 29, 2006 has been received and reviewed. Claims 1-20 are in the case. Claims 1-15 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-5, 9, 11, and 16-18 stand rejected under 35 U.S.C. § 102(b). Claims 6-8, 10, 12-15 and 19-20 stand rejected under 35 U.S.C. § 103(a).

By this paper, claims 1, 11, and 16 have been amended. For the reasons set forth below, claims 1-20 are believed to be in condition for immediate allowance. Favorable reconsideration of the application in view of the following remarks, is therefore respectfully requested.

Rejection of Claims 1-15 Under 35 U.S.C. §112, second paragraph

Claims 1-15 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Office Action finds "pulling ... during backing of the vehicle" to be indefinite when included in a method claim.

By this paper, claims 1 and 11 have been amended to remove the cited language. Accordingly, reconsideration of claims 1-15 is respectfully requested.

Rejection of Claims 1-5, 9, 11, and 16-18 Under 35 U.S.C. §102(b)

Claims 1-5, 9, 11, and 16-18 stand rejected under 35 U.S.C. §102(b) as being anticipated by Safko. However, for a prior art reference to anticipate, every element of the claimed invention must be identically disclosed in a single prior art reference. Moreover, those elements must be arranged or connected together in a single reference in the same way as specified in the patent claim. Safko does not meet this test.

For example, with respect to claims 1-5, 9, and 11, Applicant finds in Safko no disclosure of a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom a length sufficient to pass around the second end to a location of capture thereof between a wheel and a supporting surface.

Rather, Applicant finds that while Safko discloses a cargo unit 5, Safko does not disclose any second portion connecting to that cargo unit 5 proximate a second (rearward) end of the cargo unit. *See* Safko at Figure 1 (lack of a connection is shown between belts 3, 4 and cargo unit 5 proximate the second end of the truck bed) and col. 1, lns. 30-39 (stating that belts are "13 feet in length or the full length [of the truck bed] to the tail gate plus about 7 feet ... [which is] ... sufficiently long that their rear ends may be manually projected underneath the rear tires"). Accordingly, the cargo area 5 and belts 3, 4, of Safko do not combine to form the flexible member claimed by Applicant.

Also, Applicant finds that while Safko discloses belts 3, 4 that extend into the cargo area and also extend to a location beneath the rear wheels, Safko does not disclose that those belts 3, 4 substantially completely cover the cargo area. That is, Safko disclose belts 3, 4 that are only "about 12 inch [sic] wide." Safko at col. 1, lns. 32-39. Accordingly, the belts 3, 4 alone of Safko do not form the flexible member claimed by Applicant. Reconsideration of claims 1-5, 9, and 11 is, therefore, respectfully requested.

With respect to claims 16-18, Applicant finds in Safko no disclosure of depositing a load directly onto a first portion of a flexible member and then backing a vehicle until a length of the first portion passes under the second end of the vehicle. While Safko may disclose placing a

cargo onto a cargo unit 5, Safko discloses that the cargo unit is not pulled under the second end of the vehicle. *See* Safko at Figure 1.

Also, while Safko discloses an alternative embodiment where a mat is used “instead of [a] cargo unit,” Applicant finds no teachings or suggestions in Safko indicating that such a mat would function any differently than the cargo unit 5. That is, it is pure conjecture for the Office Action to assert that the mat would somehow behave differently than the cargo unit and, in operation, be pulled under or around the second end of the cargo area. In fact, Safko’s silence on this particular detail more reasonably leads to an opposite conclusion (*i.e.*, that the mat is connected and functions as does the cargo unit, making further qualification unnecessary).

Finally, while the belts 3, 4 of Safko may be pulled under a distal end of the illustrated truck, such belts 3, 4, do not anticipate Applicant’s recitations because they never have a load placed directly thereon (*i.e.*, only the cargo unit 5 may have a load directly thereon). *See* Safko at Figure 2. Accordingly, reconsideration of claims 16-18 is respectfully requested.

Rejection of Claims 6 and 19 Under 35 U.S.C. §103(a)

Claims 6 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safko. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP 2143. Safko does not meet this test.

With respect to claim 6, as presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom a length sufficient to pass around the second end to a location of capture

OCT 04 2006

thereof between a wheel and a supporting surface. Accordingly, reconsideration of claim 6 is respectfully requested.

With respect to claim 19, as presented hereinabove, Safko does not teach or suggest depositing a load directly onto a first portion of a flexible member and then backing a vehicle until a length of the first portion passes under the second end of the vehicle. Accordingly, reconsideration of claim 19 is respectfully requested.

Rejection of Claims 7-8, 10, 12-15, and 20 Under 35 U.S.C. §103(a)

Claims 7-8, 10, 12-15, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Safko in view of Kellogg. However, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP 2143. The combination of Safko and Kellogg does not meet this test.

With respect to claims 7-8, 10, and 12-15, as presented hereinabove, Safko does not teach or suggest a flexible member having a first portion substantially completely covering a cargo area and a second portion connecting to the first portion proximate a second end of the cargo area and extending therefrom a length sufficient to pass around the second end to a location of capture thereof between a wheel and a supporting surface. Moreover, adding the teachings of Kellogg to those of Safko does not remedy the deficiencies of Safko. Kellogg is completely silent on the issue of a flexible member and is only cited by the Office Action for its teaching of a loading tailgate with rollers. Accordingly, reconsideration of claim 7-8, 10, and 12-15 is respectfully requested.

With respect to claim 20, to establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See* MPEP 2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Accordingly, because Sakfo teaches against Kellogg, there is no suggestion or motivation to combine and Sakfo and Kellogg cannot properly form the basis of an obviousness rejection of claim 20.

Specifically, the truck 1 taught by Sakfo would have had a tailgate when originally manufactured. However, as can be seen in Figures 1-4, Sakfo teaches removal of the tailgate before the invention thereof is implemented. Also, Sakfo states, “the extensions may be folded 90° to serve as a tail gate to substitute for the tail gate of the vehicle which has been previously removed.” Sakfo at col. 1, ins. 39-42 (emphasis added). Thus, Sakfo teaches against the use of tailgates.

In direct contrast to Sakfo, Kellogg teaches “a loading tailgate for a truck body.” Thus, Sakfo’s teaching of tailgate removal is in direct opposition to Kellogg’s teaching of tailgate use. This teaching against destroys any motivation to combine Sakfo and Kellogg. *See* MPEP 2143.01. Accordingly, there can be no proper *prima facie* case built on Sakfo and Kellogg.

The Office Action’s response to the foregoing analysis is based wholly on conjecture, using Applicant’s specification as a template, and is, therefore, unsatisfactory and improper. For example, the Office Action states that “the only reason Sakfo removes the tailgate is because the replacement cargo carrier 5 is longer than the original bed.” Notably, the Office Action provides

no citation for this assertion. In fact, Safko makes no such statement. Rather, this assertion is the Office Action's guess as to why Safko teaches removal of the tailgate.

Similarly, the Office Action states that "Safko still uses a tailgate, it is just not the original one." Again, the Office Action cites no support for this assertion. Perhaps, the Office Action is referring to the fact that Safko teaches that belts 3, 4 "may be folded 90° to serve as a tail gate." Safko at col. 1, lns. 39-40 and Figure 3. However, even if such flexible belts may be considered a "tail gate," such a flexible tailgate would be antithetical to and wholly incompatible with the roller members 56, 58 of Kellogg that require a tailgate of significant rigidity and strength to support "heavy objects 166 or 168." Kellogg at col. 3, lns. 24-26 and Figures 3, 4.

Finally, the Office Action states that "in the embodiment where a mat (which presumably would fit within the confines of the original cargo bed) rather than the cargo carrier 5 is used, use of the original tailgate would clearly be desirable. Again, the Office Action fails to meet its burden, citing no support for these presumptions and assertions. Again, no support for such presumptions and assertions exists in Safko. They amount to nothing more than wishful thinking.

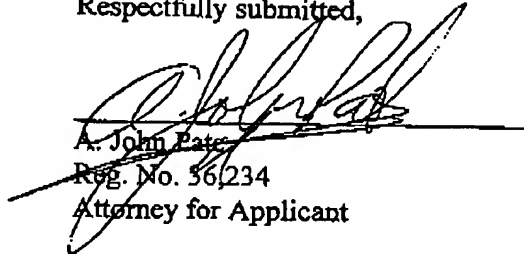
The unsupported assertions and hindsight in the Office Actions rejection of claim 20 do not withstand scrutiny and are contrary to proper requirements. The fact remains that there can be no motivation to combine Safko and Kellogg because the former teaches removal of a component vital to the latter. Accordingly, reconsideration of claim 20 is respectfully requested.

OCT 04 2006

In the event that the examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 4th day of October, 2006.

Respectfully submitted,


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